



1201 15th Street NW
Suite 350
Washington, DC 20005
Phone 202-898-2578
Fax 202-898-2583
www.nasuad.org

January 30, 2018

Re: Regulatory Information Number (RIN) 1205-AB79

Adele Gagliardi, Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW.
Room N-5641
Washington, DC 20210

President
Lora Connolly
California

Vice President
Yonda Snyder
Indiana

Treasurer
Duane Mayes
Alaska

At-Large
Alice Bonner
Massachusetts

At-Large
Curtis Cunningham
Wisconsin

At-Large
Nels Holmgren
Utah

At-Large
Claudia Schlosberg
Washington, DC

SUBMITTED ELECTRONICALLY VIA REGULATIONS.GOV

Dear Administrator Gagliardi:

On behalf of the National Association of States United for Aging and Disabilities (NASUAD), I am writing to you regarding the Department of Labor's (DOL) Interim Final Rule (IFR) released December 1, 2017. NASUAD is a nonpartisan association of state government agencies and represents the nation's 56 state and territorial agencies on aging and disabilities. We work to support visionary state leadership, the advancement of state systems innovation, and the development of national policies that support home and community-based services (HCBS) for older adults and persons with disabilities. Our members administer a wide range of services and supports programs for older adults and people with disabilities, including the Senior Community Service Employment Program (SCSEP) in many states. Together with our members, we work to design, improve, and sustain state systems delivering HCBS for people who are older or have a disability and for their caregivers.

Background:

On December 1, 2017, the U.S. Department of Labor (DOL) released an Interim Final Rule¹, or IFR, regarding the Senior Community Service Employment Program, commonly referred to as SCSEP. SCSEP is the only Federal job and training program aimed specially at older and low-income American workers. The IFR makes largely non-substantive changes to the regulatory framework regarding SCSEP, including updating terminology, definitions, and creating greater alignment with the Workforce Innovation and Opportunity Act (WIOA). The IFR also updates performance measures

¹ <https://www.gpo.gov/fdsys/pkg/FR-2017-12-01/pdf/2017-25834.pdf>

to align with changes made in legislation in the 2016 reauthorization of the Older Americans Act (OAA). We recognize that the IFR is primarily intended to implement statutory language; however, we believe that there are several areas where DOL should consider modifications to policy and practice in order to ensure that SCSEP programs and participants are not adversely impacted by the changes.

Negotiations on Expected Performance Measures:

Although the statute allows for negotiations around expected levels of performance, state experience indicates that there is a disconnect between policy and practice. A number of states reported experiencing significant challenges during negotiations on the performance measures. While some states noted they have had some successes with negotiations, many others stated there was little time allotted for, or interest in, negotiation from their federal partners. Moreover, there appears to be inconsistency on the practice of negotiations on a regional basis, creating opportunities for some states and none for others. NASUAD believes that it is important to create a culture where negotiation is the norm rather than the exception. Such a culture change must begin at the federal level and be applied consistently across the country.

Currently, negotiations on expected levels of performance between DOL and state SCSEP grantees are conducted on a state-specific basis, and many states have reported requiring lengthy negotiations in the lead-up to a grant year. These negotiations have often been delayed due to confusion and ambiguity regarding the types of data necessary to support a state's proposed measures. States would like additional guidance regarding the types of information that is acceptable during performance measure negotiations, so that they can be targeted and strategic with their data collecting endeavors. Specifically, states would appreciate guidance from DOL on other sources of data that DOL would take into account when negotiating levels of performance, such as data from other programs—for example, Temporary Assistance for Needy Families (TANF), Supplemental Security Income/Social Security Disability (SSI/SSDI), Supplemental Nutrition Assistance Program (SNAP), among other programs. States would also appreciate DOL guidance and direction that eases barriers for information sharing between SCSEP and these programs, particularly in states where different agencies are responsible for administering them.

Also regarding negotiations, state grantees noted barriers surrounding the timelines of the determinations. The result is that, although policy prioritizes negotiations as an important component of setting performance measures, the negotiations are often not resolved in practice. In particular, requiring grantees to negotiate during the grant application period poses key logistical and time hurdles for states given the stressors placed on limited agency staff during this time period. The deadlines also result in a limited amount of time for negotiations to be finalized. Moreover, knowing that DOL will not release SCSEP funds until negotiations are accepted and complete, means that grantees face additional pressure to comply with what the agency proposes instead of continuing to negotiate for more reasonable and achievable outcomes. Ultimately, this leads to a number of instances where states are unable to secure reasonable modifications to their performance measures during negotiations and instead must accept the metrics that DOL proposes.

Recommendation(s): NASUAD requests that DOL issue some form of sub-regulatory guidance, FAQs, or other document to assist states with gathering data to assist with the negotiation process and coming to agreed upon performance measures. NASUAD also recommends that DOL work with other federal agencies, including the Department of Health and Human Services and the Department of Agriculture, to provide clear guidance regarding data-sharing between programs such as SNAP, TANF, Unemployment Insurance, and the SCSEP program. Finally, NASUAD recommends that DOL consider allowing for adjustments in the timeline of negotiations, and to consider allowing for a certain percentage of funds to be released and/or to provide funds on an interim contingency basis while negotiations are ongoing in order to allow program continuity and policy certainty.

Data Collection and Outcomes Measurement:

There is significant interest from state SCSEP grantees on gaining access to Unemployment Insurance (UI) wage data for tracking employment outcomes, as opposed to the current practice which requires follow-along case management to track SCSEP project participant hours and earnings. The current practice is both time and labor intensive, and it also often results in incomplete and inaccurate wage and hour data. This situation would be exacerbated under the new performance requirements. We note that the January 10th webinar included information on DOL's efforts to ensure that grantees have access to this data and want to stress the importance of accomplishing this in a timely manner.

States also noted that it is important that, wherever and whenever possible, DOL use data on older workers in its calculations. This includes when determining local and regional employment and unemployment figures, among others. While we appreciate and agree with DOL's emphasis on increasing collaboration between the WIOA and SCSEP programs, it is also crucial to recognize SCSEP for what it is: the only federal jobs program specifically for older Americans.

Recommendation(s): NASUAD appreciates DOL's current efforts to obtain UI wage records data, and encourages the agency to continue to pursue this endeavor as it would greatly benefit state SCSEP grantees. Once this data is made available to grantees, we strongly encourage DOL to phase-out the requirement for follow-along case management and to instead use the UI data to track employment outcomes. We also hope that DOL will provide robust technical assistance, as needed, to grantees on the use of this data once it is obtained. NASUAD requests that DOL use data most applicable to the SCSEP program population—older workers—when feasible and available.

Consideration for Rural/Frontier Status:

All state labor markets and employment opportunities are not created equal. Across the United States, there continue to be significant differences between employment prospects for an individual residing in a metro area, versus one in a nonmetro area (e.g., rural or frontier). Recent data from the U.S. Department of Agriculture keenly illustrates this point. During the Great Recession, both metro and nonmetro employment fell precipitously, although nonmetro

employment saw a slightly steeper decline. Recovery from the recession has also been lopsided: by the second quarter of 2016, metro employment had exceeded its pre-recession area levels by 4.8 percent, while nonmetro employment was still below pre-recession levels.² Rural/frontier areas have additional challenges as well, including lower labor force participation rates, and a shrinking labor force since the recession, both indicators that have been impacted by the aging of population of the U.S. writ large.³

DOL currently requires statewide measures which do not necessarily allow for more nuanced adjustments to be made for local employment dynamics or the specific challenges for rural/frontier areas.

Recommendation(s): NASUAD recommends that DOL allow states to take into account rural/frontier issues when negotiating performance measures, which would include allowing for different regional measures within the same state.

State-Specific Economic Factors:

There are other factors aside from rurality and frontier status affecting SCSEP and other employment programs across the states, including access to affordable housing, transportation, and the interplay of various public benefits programs with one another. Little, if any, of these additional factors are considered under current SCSEP practice. State grantees have expressed concerns, particularly for urban areas in this case, that SCSEP participants may face substantial barriers to employment such as receiving Section 8 in a high-cost, low-vacancy area, and that by obtaining employment could be at risk of losing their housing. This is particularly relevant because SCSEP wages are often not counted as income for federal benefits, whereas unsubsidized employment is included in the calculation. This can lead to individuals experiencing a significant “benefits cliff” when entering unsubsidized employment, to the point where working results in a worse financial situation than they were previously in. The ultimate outcome of this is that some participants may cease working after their SCSEP period is over, through no fault of the employment program. This is merely one example of the complex interactions and interplay between public programs that individuals must navigate.

While achieving unsubsidized employment is a key goal of the SCSEP program, in many states and localities there remains a significant gap between the unsubsidized income needed to make ends meet and the possible reduction of public benefits due to achieving employment. State SCSEP coordinators and the operational staff have the well-being of project participants at heart and they should not be expected to potentially cause harm – via a drastic change in life circumstances – in order to improve their performance measures. We believe that DOL should work with states to identify mechanisms to ensure that every participant’s life is improved by participation in the SCSEP program.

² <https://www.ers.usda.gov/topics/rural-economy-population/employment-education/rural-employment-and-unemployment/#ue>

³ Ibid.

Recommendation(s): NASUAD recommends that DOL allow states to use additional economic factors such as housing availability and other issues related to affordability and cost of living as a part of their outcome measures. NASUAD also recommends that DOL work with partners in the federal government to evaluate options for gradual reduction in benefits for people as they leave SCSEP instead of the current benefits cliff.

New “Effectiveness” Measure:

Currently one of SCSEP’s performance measures assesses the satisfaction of the program’s three key stakeholders: participants, employers, and host agencies. Under the changes in the IFR, this measure will now evaluate “indicators of effectiveness” in serving employers, host agencies, and project participants. Satisfaction and effectiveness are two concepts with considerable differences. In some ways, satisfaction is actually more concrete of a measure given that “effectiveness” could be defined and assessed in many different ways. Determining what effectiveness means for the SCSEP program must be an open and collaborative process that takes into account the unique features of the program. We recognize that DOL is currently piloting effectiveness measures in other WIOA programs; however, we are unsure how well they will translate to SCSEP.

Recommendation(s): NASUAD appreciates DOL’s willingness to continue to utilize the satisfaction measure until a more detailed and rigorous effectiveness measure can be tested and developed. We strongly recommend that DOL create a stakeholder workgroup made up of national SCSEP grantees, state grantees, and DOL representatives to collaborate on evaluating the applicability of the piloted measures to SCSEP as well as the modification and/or development of new indicators of effectiveness measures.

Employment Retention/Unsubsidized Employment Measure:

Under the current SCSEP performance measures, program managers must report on employment retention/unsubsidized employment using the following calculation: second and third quarters after exit quarter, only for those employed in the 1st quarter after exit quarter. For the revised measure, the calculation has been changed to: fourth quarter after exit quarter, regardless of whether there was prior employment. While NASUAD appreciates the consolidation of the second and third quarters into a simpler fourth-quarter-only format, this new calculation raises a concern that project staff will now have to perform follow-up on all participants who left the program in the past year, regardless of the reason why. Follow-along monitoring of participants under the current system is already time-consuming for state staff, particularly for large projects, and this change will dramatically increase the staff time required for tracking. Participants often leave the program due to reasons other than employment, such as moving out of the area, health concerns, or caregiving responsibilities. Requiring programs to track every one of these individuals, particularly those who were not employed at the time of program exit, for at least a year after leaving the program is resource intensive and will not provide any meaningful information beyond what is already collected.

Recommendation(s): NASUAD recommends that DOL only require tracking for those individuals that have entered employment in the fourth quarter after exit, aligning more with the current measure.

NASUAD appreciates the opportunity to comment on this important topic. We look forward to working with DOL in the coming months on the implementation of the IFR. If you have any questions regarding this letter, please feel free to contact Adam Mosey of my staff at amosey@nasuad.org or (202) 898-2578.

Sincerely,

A handwritten signature in blue ink that reads "Martha A. Roherty". The signature is written in a cursive style.

Martha A. Roherty
Executive Director
NASUAD

